



01-14-05

PATENT

Attorney Docket No.: 26/1145US(0.1) (AT 10759-160)

Ifw

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Cory O. Nykoluk :  
Serial No.: 10/688,447 : Group No.: 3727  
Filed: October 17, 2003 : Examiner: Mai, Tri M.  
For: PIVOTAL HANDLE FOR TOWABLE :  
BAGGAGE :

**Mail Stop: Amendment**  
**Commissioner for Patents**  
**P.O. Box 1450**  
**Alexandria, VA 22313-1450**

1. Transmitted herewith is:
  - Transmittal with Certificate of Express Mail (3 pgs., in duplicate)
  - Examiner Interview Summary (1 pg.)
  - Notice of Related Litigation (1 pg.), with attached:
  - Notice of Lawsuit and Request for Waiver of Service of Summons filed in the United States District Court, Eastern District of Missouri, December 22, 2003, docket no. 4 03CV01822CAS (4 pgs.);
  - Civil Cover Sheet for docket no. 4 03CV01822CAS dated December 22, 2003 (1 pg.);
  - Copy of the complaint as filed on March 24, 2004 (13 pgs.);
  - Copy of the answer from the defendant as filed March 24, 2004 (5 pgs.)
  - Formal Drawing Transmittal (1pg.)
  - Four (4) Sheets of Formal Drawings
  - Return Postcard

**CERTIFICATE OF MAILING BY EXPRESS MAIL TO**  
**THE COMMISSIONER FOR PATENTS**

**Express Mail No. EV 593389111 US**  
**Date: January 13, 2005**

I hereby certify that the documents listed above are being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 C.F.R. §1.10 on the date indicated above in an envelope addressed to: Mail Stop: Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.



Dean Small, Registration No. 34,730



Express Mail No. EV 593389111 US

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Attorney Docket No. 26/1145US(0.1) (AT 10759-160)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Cory O. Nykoluk et al. :  
: Art Unit: 3727  
Serial No.: 10/688,447 :  
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Filed: October 17, 2003 :  
: :  
For: PIVOTAL HANDLE FOR TOWABLE :  
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**Examiner Interview Summary**

Mail Stop: Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

The Examiner is thanked for holding a teleconference with the undersigned on January 12, 2005, regarding the above-matter. During the teleconference, the undersigned pointed out that the outstanding Office Action mailed September 3, 2004, acted upon claims 1-29.

However, claims 1-29 were cancelled in a Preliminary Amendment filed October 17, 2003, and replaced with new claims 30-52. The Examiner acknowledged the error in the Office Action and agreed to withdraw the outstanding Office Action and provide a new action on the merits regarding claims 30-52.

Respectfully Submitted,

---

Dean Small, Registration No.: 34,730  
ARMSTRONG TEASDALE LLP  
One Metropolitan Square, Suite 2600  
St. Louis, Missouri 63102-2740  
(314) 621-5070



Express Mail No.: EV 593389111 US

PATENT

Attorney Docket No. 26/1145US(0.1) (AT 10759-160)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Cory O. Nykoluk et al. :  
: Art Unit: 3727  
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Filed: October 17, 2003 :  
:   
For: PIVOTAL HANDLE FOR TOWABLE :  
BAGGAGE :

**NOTICE OF RELATED LITIGATION**

Commissioner for Patents  
Alexandria, Virginia 22313

Pursuant to the duty of disclosure under 35 U.S.C. § 1.56, and pursuant to MPEP § 2001.06(c), notice is hereby given to the Examiner of litigation related to the subject matter of the present application. Specifically, notice is hereby given relating litigation of U.S. Patent Application Serial No. 09/705,171 filed November 2, 2000, now issued U.S. Patent No. 6,651,791, from which the present application claims priority.

A patent infringement lawsuit in which the '791 patent was asserted was filed in the Eastern District of Missouri on December 22, 2003 and was assigned docket number 4 03CV01822CAS. Attached hereto are true and accurate copies of the complaint as filed and an answer from the defendant which was filed in the case on March 24, 2004. The litigation was subsequently settled without adjudication of the merits of the claims and defenses pleaded in the answer and complaint. Additionally, the litigation was settled without discovery proceedings and without exchange of documents between the plaintiff and defendant in support of or in conflict with the claims and defenses asserted in the pleadings.

Specifically, Applicants' and their attorneys are unaware of any document or information that would substantiate the defendant's second affirmative defense set forth in paragraph 21 of

the answer that the claims of U.S. Patent No. 6,651,791 are invalid on one or more grounds specified in 35 U.S.C. §§ 101, 102, 103 and 112, and Applicants and their attorneys received no such documentation or information in the course of the litigation.

While applicants and their attorneys have no further documents to submit in connection with the litigation, the Examiner is invited to contact the undersigned should the Examiner have any questions regarding the litigation or require further information.

No fee is believed to be due for this Notice of Related Litigation. If, however, a fee is due, the Commissioner is authorized to charge any applicable fee to Deposit Account Number 01-2384.

Respectfully Submitted,



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Dean Small  
Registration No. 34,730  
ARMSTRONG TEASDALE LLP  
One Metropolitan Square, Suite 2600  
St. Louis, Missouri 63102-2740  
(314) 621-5070

Express Mail No. EV 593389111 US

PATENT

Attorney Docket No. 26/1145US(0.1) (AT 10759-160)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Cory O. Nykoluk et al.

Serial No.: 10/688,447

Filed: October 17, 2003

For: PIVOTAL HANDLE FOR TOWABLE  
BAGGAGE

Art Unit: 3727

Examiner: Mai, Tri M.

**TRANSMITTAL OF FORMAL DRAWINGS**

Mail Stop: Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Enclosed are Four (4) sheets of Formal Drawings for the above-identified patent application. No new matter has been added.

Respectfully submitted,



Dean Small, Registration No. 34,730  
Armstrong Teasdale LLP  
One Metropolitan Square, Suite 2600  
St. Louis, Missouri 63102-2740  
314/621-5070



**United States District Court**  
**EASTERN DISTRICT OF MISSOURI**  
**NOTICE OF LAWSUIT AND**  
**REQUEST FOR WAIVER OF SERVICE OF SUMMONS**

**\*\* Plaintiff to Complete Gray Area \*\***

TO: L. Franklin, 1001 Franklin Ave, S. Plainfield, NJ 07080

(Name of defendant)

(as Registered Agent of TUMI, Inc.)

(Title)

(Name of business)

A lawsuit has been commenced against you (or the entity on whose behalf you are addressed). A copy of the complaint is attached to this notice. It has been filed in the United States District Court for the Eastern District

of Missouri and has been assigned docket number

**4 03CV01822 CAS**

This is not a formal summons or notification from the court, but rather my request that you sign and return the enclosed waiver of service in order to save the cost of serving you with a judicial summons and an additional copy of the complaint. The cost of service will be avoided if I receive a signed copy of the waiver within 30 days after the date designated below as the date on which this Notice and Request is sent. I enclose a stamped and addressed envelope (or other means of cost-free return) for your use. An extra copy of the waiver is also attached for your records.

**If you comply with this request and return the signed waiver to the undersigned, it will be filed with the court and no summons will be served on you.** The action will then proceed as if you had been served on the date the waiver is filed, except you will not be obligated to answer the complaint before 60 days from the date designated below as the date on which this notice is sent (or before 90 days from that date if your address is not in any judicial district of the United States).

If you do not return the signed waiver within the time indicated, I will take appropriate steps to effect formal service in a manner authorized by the Federal Rules of Civil Procedure and will then, to the extent authorized by those Rules, ask the court to require you (or the party on whose behalf you are addressed) to pay the full costs of such service. In that connection, please read the statement concerning the duty of parties to waive the service of the summons, which is set forth on the foot of the waiver form.

I affirm that this request is being sent to you on behalf of the plaintiff, this 22nd day of December, 2003

[Signature]  
Signature of Plaintiff's Attorney or  
Unrepresented Plaintiff

**DUTY TO AVOID UNNECESSARY COSTS OF SERVICE OF SUMMONS**

Rule 4 of the Federal Rules of Civil Procedure requires certain parties to cooperate in saving unnecessary costs of service of the summons and complaint. A defendant located in the United States who, after being notified of an action and asked by a plaintiff located in the United States to waive service of summons, fails to do so will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the waiver.

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the action has been brought in an improper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of summons), and may later object to the jurisdiction of the court or to the place where the action has been brought.

A defendant who waives service must within the time specified on the waiver form serve on the plaintiff's attorney (or unrepresented plaintiff) a response to the complaint and must also file a signed copy of the response with the court. If the answer or motion is not served within this time, a default judgment may be taken against that defendant. By waiving service, a defendant is allowed more time to answer, than if the summons had actually served, when the request for waiver of service was received.



**United States District Court**  
EASTERN DISTRICT OF MISSOURI

**WAIVER OF SERVICE OF SUMMONS**

**NOTICE TO DEFENDANT(S)**

**\*\* Plaintiff To Complete Gray Area \*\***

To: John Quinn/Jeffrey Kass, Armstrong Teasdale LLP, 1 Metropolitan Sq, St. Louis, MO 63102  
(Name of plaintiff's attorney or unrepresented plaintiff)

I acknowledge receipt of your request that I waive service of a summons in the action of:

Case Caption: TRG Accessories, LLC v. TUMI Inc.

Case Number: 4 03CV01822CAS

in the United States District Court for the Eastern District of Missouri. I have also received a copy of the complaint in this action, two copies of this instrument, and a means by which I can return the signed waiver to you without cost to me.

I agree to save the cost of service of a summons and an additional copy of the complaint in this lawsuit by not requiring that I (or the entity on whose behalf I am acting) be served with judicial process in the manner provided by Rule 4.

I (or the entity on whose behalf I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for objections based on a defect in the summons or in the service of the summons.

I understand that a judgment may be entered against me (or the party on whose behalf I am acting) if an answer or motion under Rule 12 is not served upon you within 60 days after \_\_\_\_\_ (Date Waiver sent)

or within 90 days after date if the request was sent outside the United States.

**DEFENDANT'S ACKNOWLEDGMENT OF WAIVER OF SERVICE**

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Signature

as \_\_\_\_\_  
(Officer or Agent)

of \_\_\_\_\_  
(Corporation or Association)

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, Zip Code

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

FILED

DEC 22 2003

U. S. DISTRICT COURT  
EASTERN DISTRICT OF MO

TRG Accessories, LLC

Plaintiff(s),

Vs.

TUMI Inc.,

Defendant(s).

4 03CV01822CAS

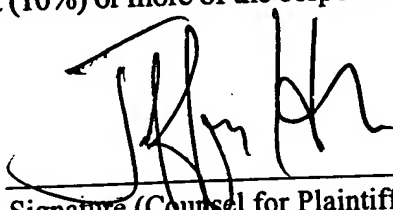
DISCLOSURE OF CORPORATION INTERESTS  
CERTIFICATE

Pursuant to Rule 2.09 of the Local Rules of the United States District Court for the Eastern District of Missouri notice is hereby given by counsel of record for TRG Accessories, LLC, that the following corporate interests are disclosed:

1. The parent companies of the corporation:  
The Centric Group

2. Subsidiaries not wholly owned by the corporation:  
None

3. Any publicly held company that owns ten percent (10%) or more of the corporation:  
None

  
Signature (Counsel for Plaintiff/Defendant)  
Print Name: John Quinn III/Jeffrey Kass  
Address: One Metropolitan Sq, Ste 2600  
St. Louis, Missouri  
City/State/Zip: 63102  
Phone: 314-621-5070 Fax: 314-621-5065



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI

**FILED**

DEC 22 2003

TRG Accessories, LLC

U. S. DISTRICT COURT  
EASTERN DISTRICT OF MO

plaintiff,

v.

TUMI Inc.,

defendant.

Case No.

**4 03CV01822CAS**

**ORIGINAL FILING FORM**

**THIS FORM MUST BE COMPLETED AND VERIFIED BY THE FILING PARTY WHEN  
INITIATING A NEW CASE.**

—THIS CAUSE, OR A SUBSTANTIALLY EQUIVALENT COMPLAINT, WAS  
PREVIOUSLY FILED IN THIS COURT AS CASE NUMBER \_\_\_\_\_  
AND ASSIGNED TO THE HONORABLE JUDGE \_\_\_\_\_.

☒ NEITHER THIS CAUSE, NOR A SUBSTANTIALLY EQUIVALENT COMPLAINT,  
PREVIOUSLY HAS BEEN FILED IN THIS COURT, AND THEREFORE MAY BE  
OPENED AS AN ORIGINAL PROCEEDING.

**The undersigned affirms that the information provided above is true and correct.**

Date: 12-22-03

  
\_\_\_\_\_  
Signature of Filing Party

## CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

TRG Accessories, LLC

## DEFENDANTS

TUMI Inc.

(b) County of Residence of First Listed Plaintiff St. Louis County  
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Middlesex County, NJ  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

## (c) Attorney's (Firm Name, Address, and Telephone Number)

John Quinn III/Jeffrey Kass,  
1 Metropolitan Sq., St. Louis  
MO 63102, 314-621-5070

Attorneys (If Known)

4 03CV01822CAS

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☒ 1 PTF ☐ 1 DEF Incorporated or Principal Place of Business In This State ☐ 4 PTF ☐ 4 DEF
- Citizen of Another State ☐ 2 PTF ☒ 2 DEF Incorporated and Principal Place of Business In Another State ☐ 5 PTF ☐ 5 DEF
- Citizen or Subject of a Foreign Country ☐ 3 PTF ☐ 3 DEF Foreign Nation ☐ 6 PTF ☐ 6 DEF

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT		TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury—Med. Malpractice	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment	
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury—Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust	
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 430 Banks and Banking	
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 630 Liquor Laws	<input checked="" type="checkbox"/> 830 Patent	<input type="checkbox"/> 450 Commerce/ICC Rates/etc.	
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 460 Deportation	
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 650 Airline Regs.		<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle Product Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 660 Occupational Safety/Health		<input type="checkbox"/> 810 Selective Service	
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability		<input type="checkbox"/> 690 Other		<input type="checkbox"/> 850 Securities/Commodities/Exchange	
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury				<input type="checkbox"/> 875 Customer Challenge 12 USC 3410	
<input type="checkbox"/> 190 Other Contract					<input type="checkbox"/> 891 Agricultural Acts	
<input type="checkbox"/> 195 Contract Product Liability					<input type="checkbox"/> 892 Economic Stabilization Act	
					<input type="checkbox"/> 893 Environmental Matters	
					<input type="checkbox"/> 894 Energy Allocation Act	
					<input type="checkbox"/> 895 Freedom of Information Act	
					<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice	
					<input type="checkbox"/> 950 Constitutionality of State Statutes	
					<input type="checkbox"/> 890 Other Statutory Actions	

## V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

(Cite the U.S. Civil Statute under which you are filing and write brief statement of cause.  
Do not cite jurisdictional statutes unless diversity.)

Patent infringement under 35 USC 271

## VII. REQUESTED IN COMPLAINT:

G CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$  
Excess of \$75,000

CHECK YES only if demanded in complaint:  
JURY DEMAND: ☒ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE

DOCKET NUMBER

DATE 12-22-03

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

FILED

DEC 22 2003

U. S. DISTRICT COURT  
EASTERN DISTRICT OF MO

TRG ACCESSORIES, LLC

Plaintiff,

vs.

TUMI, INC.

Serve:

L. Franklin  
1001 Durham Ave.  
S Plainfield, NJ 07080

Defendant.

4 03CV01822 CAS

COMPLAINT OF PLAINTIFF  
TRG ACCESSORIES, INC.

JURY TRIAL DEMANDED

**COMPLAINT**

Plaintiff TRG Accessories, LLC ("TRG"), for its Complaint for Injunctive Relief and Monetary Damages against Tumi, Inc. ("Tumi"), states:

1. This is an action for patent infringement under 35 U.S.C. § 271. This Court, therefore, has jurisdiction over the matter under 28 U.S.C. §§ 1331 and 1338.
2. To plaintiffs' knowledge and belief, Tumi has sold and continues to sell infringing products to businesses located in the State of Missouri, within the Eastern District, and is therefore doing business within this State and this District. The customers of Tumi in turn sell and offer to sell infringing products in this State and District. Tumi also offers for sale infringing products on its interactive web site, [www.tumi.com](http://www.tumi.com), where customers may purchase infringing products.
3. As a result of these sales and activities, Tumi has purposefully directed its activities at residents of Missouri, the claim for relief arises out of activities within this State and

elsewhere, and the exercise of jurisdiction is reasonable. This Court, therefore, has personal jurisdiction over Tumi under the United States Constitution and Missouri's long-arm statute.

4. Venue is proper in this Court under 28 U.S.C. §§ 1391 and 1400.

#### **The Parties**

5. TRG is a Missouri limited liability company having its principal place of business in St. Louis County, Missouri.

6. Defendant Tumi is a New Jersey corporation having its principal place of business in South Plainfield, New Jersey, and does business over the Internet sells to various retail stores throughout the United States, including within this District.

#### **Background**

7. TRG is a leader in the design, sale and marketing of baggage, including travel luggage. TRG sells its products throughout the United States.

8. On November 25, 2003, U.S. Patent No. 6,651,791 (the '791 patent) titled "PIVOTAL HANDLE FOR TOWABLE BAGGAGE," was duly and legally issued to TRG as assignee of Cory O. Nykoluk and David Mitterman, the inventors named in U.S. Patent Application No. 09/705,171, filed November 2, 2000. A true and accurate copy of the '791 patent is attached hereto as Exhibit A.

9. The '791 patent relates to a pivotal handle to be attached, permanently or removeably, to a piece of baggage.

10. Since the issuance of the '791 patent, TRG has been and remains the owner of all right, title and interest to the '791 patent, including the right to recover for past infringement.

11. Infringing products manufactured by and/or for Tumi have been sold by Tumi in this district.

**Patent Infringement Under 35 U.S.C. § 271**

12. TRG restates paragraphs 1 through 11 as if fully set forth herein.

13. TRG is the owner of the '791 patent.

14. Tumi has infringed one or more of the claims of the '791 patent in connection with the manufacturing, using, offering to sell and selling of products embodying the invention claimed in the '791 patent. Unless enjoined, Tumi will continue its infringing activities to the irreparable injury of TRG.

15. Upon information and belief, Tumi is actively inducing others to infringe, and/or is contributing to the infringement by others of, one or more of the claims of the '791 patent by, among other things, selling infringing products to businesses which it knows will sell and use said products.

16. Tumi has been given actual notice of the '791 patent, and of its infringement of the '791 patent, by virtue of this lawsuit.

17. Tumi's infringement is continuing.

18. Tumi's infringement of the '791 patent has caused damages to TRG, including but not limited to lost profits and lost royalties.

19. Although monetary compensation will afford TRG some relief, much of the damages TRG will suffer are immediate and irreparable.

WHEREFORE, TRG respectfully prays for entry of judgment in its favor against Tumi for all relief available under 35 U.S.C. Chapter 29, including the following:

- a. Injunctive relief precluding Tumi's further infringement of the '791 patent;
- b. An order requiring an accounting of damages by virtue of Tumi's infringement.

- c. Compensatory damages equal to lost profits resulting from Tumi's infringing activities or an amount at least equal to a reasonable royalty for Tumi's unauthorized use of or contributing to the use of the '791 patent;
- d. All other relief deemed by the Court to be just and proper.

**JURY DEMAND**

Plaintiff hereby demands trial by jury of all issues so triable in this action.

ARMSTRONG TEASDALE LLP

BY: 

John H. Quinn III, #41110

Jeffrey H. Kass, #60672

One Metropolitan Square, Suite 2600

St. Louis, Missouri 63102-2740

(314) 621-5070

(314) 621-5065 (facsimile)

ATTORNEYS FOR TRG ACCESSORIES,  
LLC

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

-----X		
TRG ACCESSORIES, LLC	:	Civil Action No.
	:	4 03CV01822CAS
Plaintiff,	:	
v.	:	
TUMI, INC.	:	
Defendant.	:	
-----X		

**DEFENDANT TUMI, INC.'S ANSWER, AFFIRMATIVE  
DEFENSES AND COUNTERCLAIMS**

Defendant Tumi, Inc. ("Tumi"), for its Answer against TRG Accessories, LLC ("TRG"), states:

1. Admitted that TRG purports this action to be for patent infringement under 35 U.S.C. § 271 and thus this Court has jurisdiction over this matter under 28 U.S.C. §§ 1331 and 1338, but otherwise denies the allegations of paragraph 1.
2. Denied.
3. Denied.
4. Admitted upon information and belief.

**The Parties**

5. Tumi lacks information sufficient to form a belief as to the allegations set forth in this paragraph and therefore denies such allegations.

6. Tumi admits it is a New Jersey corporation having its principal place of business in South Plainfield, New Jersey, but otherwise denies the remaining allegations in this paragraph as incomprehensible.

**Background**

7. Denied.

8. Tumi admits that on November 25, 2003, U.S. Patent No. 6,651,791 ("the '791 patent") titled "PIVOTAL HANDLE FOR TOWABLE BAGGAGE," issued listing on its face TRG Accessories, LLC as the assignee and listing Cory O. Nykoluk and David Mittleman as inventors and identifying Application No. 09/705,171 filed November 2, 2000. Tumi admits that a copy of the '791 patent was attached to TRG's Complaint as Exhibit A. Tumi denies the remaining allegations in this paragraph.

9. Tumi admits that the '791 patent purports to relate to a pivotal handle to be attached, permanently or removeably, to a piece of luggage.

10. Tumi lacks information sufficient to form a belief as to the allegations set forth in this paragraph and therefore denies such allegations.

11. Denied.

**Alleged Patent Infringement Under 35 U.S.C. § 271**

12. Tumi restates its responses to paragraphs 1 through 11 as if fully set forth herein.

13. Tumi lacks information sufficient to form a belief as to the allegations set forth in this paragraph and therefore denies such allegations.

14. Denied.

15. Denied.



16. Tumi admits that it has received a copy of the Complaint in this action and, as a result of such receipt, is on notice of the allegations set forth therein, but otherwise denies the allegations set forth in this paragraph.

17. Denied.

18. Denied.

19. Denied.

#### **FIRST AFFIRMATIVE DEFENSE**

20. Tumi's product which is believed to be the subject of the Complaint does not infringe any valid and enforceable claim of the '791 patent.

#### **SECOND AFFIRMATIVE DEFENSE**

21. The claims of the '791 patent are invalid on one or more grounds specified in Title 35 including 35 U.S.C. §§ 101, 102, 103 and 112.

#### **COUNTERCLAIMS**

22. The responses and allegations set forth in paragraphs 1 through 21 are repeated and realleged herein.

23. Jurisdiction of this Court for Tumi's counterclaims arise under the Federal Declaratory Judgments Act, Title 28, United States Code, §§ 2201 and 2202, and under the laws of the United States concerning actions relating to patents, Title 28, United States Code, § 1338(a).

24. Venue for Tumi's counterclaims is proper under Title 28, United States Code §§ 1391(c) and 1400(b).

25. The claims of U.S. Patent No. 6,651,791 are invalid on one or more grounds set forth in Title 35, including Sections 101-112.

26. Tumi has not infringed any valid and enforceable claim of U.S. Patent No. 6,651,791.

WHEREFORE, defendant, Tumi Inc., prays this honorable Court for a judgment in its favor and against plaintiff, TRG Accessories, LLC, as follows:

- (a) an entry of judgment that the claims of the '791 patent are invalid;
- (b) an entry of judgment that Tumi has not infringed, either directly or indirectly, any valid, enforceable claim of the '791 patent;
- (c) an entry of judgment that Tumi's products do not infringe any valid, enforceable claim of the '791 patent;
- (d) a declaration that TRG, its officers, agents, employees, attorneys and all persons in active concert or participation with them, be permanently enjoined from suing or threatening to sue, or making any charge against Tumi, or any distributor, licensee or customer of either of them, concerning alleged infringement of the '791 patent;
- (e) an award of costs and attorneys fees to Tumi as permitted by law;
- (f) an award of prejudgment interest and postjudgment interest on Tumi's attorneys' fees; and
- (g) such other and further relief as the Court may deem appropriate.

**JURY DEMAND**

Defendant, Tumi, Inc., hereby demands a trial by jury.

Dated: March 29, 2004

/s/ Vincent H. Venker II

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing **DEFENDANT TUMI, INC.'S ANSWER, AFFIRMATIVE DEFENSES AND COUNTERCLAIMS** was served via ECF filing and U.S. Mail, postage pre-paid, this 29th day of March, 2004, to:

John H. Quinn III

Jeffrey H. Kass

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/s/ Vincent H. Venker II